

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)	
)	
Application by)	
SBC Communications Inc.,)	
Michigan Bell Telephone Company, and)	
Southwestern Bell Communications Services,)	WC Docket No. 03-16
Inc. for Provision of In-Region,)	
InterLATA Services In Michigan)	
_____)	

REPLY COMMENTS OF WORLDCOM, INC.

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INTRODUCTION AND EXECUTIVE SUMMARY

The intervening weeks since WorldCom filed its Comments have only confirmed the conclusion that SBC's OSS, performance reporting, and pricing for Directory Assistance Listings ("DAL") do not meet the requirements of section 271. During those weeks, SBC itself has acknowledged billing errors of many millions of dollars, other significant OSS problems have continued unabated, the Illinois Commission staff has recommended against approval of SBC's section 271 application in that state, and the Department of Justice ("DOJ") has concluded that it cannot support SBC's Michigan application.

Examining evidence very similar to that on the record here, the Illinois staff recommended against approval of SBC's section 271 application in that state in large part because its careful examination of the third-party tests showed that SBC's performance data is unreliable. The Commission cannot ignore this conclusion on the theory that each state can decide for itself. Because SBC systems and metrics are generally the same throughout the region, an affirmative decision on SBC's pending Michigan application likely would limit the ability of other states, such as Illinois, to pressure SBC to make additional improvements.

DOJ also found SBC's performance not yet satisfactory, based partly on evidence available to the Michigan Public Service Commission ("MPSC") and partly on new facts, including recent line loss problems and the new billing audit not available to the MPSC. DOJ's conclusion is particularly noteworthy not only because its recommendation is entitled to substantial weight under the statute, but also because DOJ has given general support to most recent section 271 applications.

As WorldCom explained in its Comments, the MPSC too expressed a number of important reservations about SBC's OSS and performance reporting. But the MPSC, unlike the

DOJ and Illinois staff, failed to reach the only conclusion from these facts that is consistent with the Act and this Commission's precedents – SBC must be required to correct its OSS and reporting deficiencies before, not after, receiving section 271 approval.

That conclusion is bolstered by evidence unavailable to the MPSC: SBC's admission of massive billing errors. In its Comments, WorldCom explained that SBC appeared to be billing WorldCom for thousands of transactions it had not transmitted. SBC has now acknowledged that it has found 62,000 UNE-P circuits statewide that were inactive, but which it was billing, as well as 76,000 circuits that it was not billing that it should have been. As DOJ points out, the 138,000 incorrectly billed circuits exist in a state with fewer than one million UNE-P lines. DOJ Eval. at 11. Such a staggering level of error cannot be minimized by SBC's glib response that a little overbilling and a little underbilling all essentially evens out in the wash.

Finally, we note that the line splitting problems discussed by AT&T are also vitally important to WorldCom. Although WorldCom is not yet submitting line splitting orders in Michigan, it is planning to begin submitting such orders in the near future. But if the problems revealed in this proceeding do not stop WorldCom in its tracks, at the very least they will force reliance on costly and potentially error-prone manual workarounds. This will be a major impediment to future competition, as broadband demand increases.

Indeed, the line splitting problems alone would justify DOJ's conclusion that the Michigan market is not yet irreversibly open to competition. When that problem is combined with the absence of reliable performance reporting to prevent future backsliding, DOJ's conclusion becomes inescapable. And these problems are only the tip of the iceberg. The numerous significant OSS problems that exist today, as well as above-cost DAL pricing, also require rejection of SBC's application.

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TABLE OF DECLARANTS

Tab	Declarant	Subject
1	Sherry Lichtenberg	OSS

TABLE OF CITATIONS

FCC ORDERS	
<i>DAL Order</i>	<i>Provision of Directory Listing Information Under the Telecommunications Act of 1934, as Amended</i> , CC Docket No. 99-273, First Report and Order, 16 F.C.C.R. 2736, FCC No. 01-27 (2001).
<i>Directory Information Listing Third Report and Order</i>	<i>In re Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information</i> , CC Docket No. 96-115, Third Report and Order, 14 F.C.C.R. 15550, FCC 99-227 (1999).
<i>New York Order</i>	<i>In re Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-region, InterLATA Service in the State of New York</i> , CC Docket No. 99-295, Memorandum Opinion and Order, 15 F.C.C.R. 3953, FCC 99-404 (1999), <i>aff=d</i> , <i>AT&T Corp. v. FCC</i> , 220 F.3d 607 (D.C. Cir. 2000)
<i>UNE Remand Order</i>	<i>In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i> , CC Docket No. 96-98, Third Report and Order, 15 F.C.C.R. 3696, FCC 99-238 (1999)
DECLARATIONS AND AFFIDAVITS	
Hoagg Aff.	Affidavit of Jeffery Hoagg on behalf of the Illinois Commerce Commission (Feb. 21, 2003) (Att. 7 to Lichtenberg Reply Decl.).
Lichtenberg Reply Decl.	Reply Declaration of Sherry Lichtenberg (attached as Tab 1 hereto).
Weber Aff.	Affidavit of Nancy Weber on behalf of the Illinois Commerce Commission (Feb. 21, 2003) (Att. 6 to Lichtenberg Reply Decl.).
STATE COMMISSION MATERIALS	
<i>MI PSC Order</i>	<i>In re on the Commission's Own Motion, to Consider SBC's Compliance with the Competitive Checklist in Section 271</i> , Case No. U-12320, Opinion and Order Approving Report on SBC's Compliance with section 271 (MI PSC Jan. 13, 2003) (SBC Appl. App. C, Tab 134).
<i>MI PSC Report</i>	<i>In re on the Commission's Own Motion, to Consider SBC's Compliance with the Competitive Checklist in Section 271</i> , Case No. U012320, Consultative Report (MI PSC Jan. 13, 2003) (SBC Appl. App. C, Tab 133).

WorldCom Reh'g Pet.	<i>In re on the Commission's Own Motion, to Consider SBC's Compliance with the Competitive Checklist in Section 271</i> , Case No. U012320, WorldCom Petition for Rehearing with Respect to Rates Charged for Directory Assistance Listings and attachments A-H (MI PSC Jan. 24, 2003) (attached as Tab 3 to WorldCom comments).
EX PARTE FILINGS	
Draft Compliance Plans	MSPC Case No. U-12320, SBC's Draft Compliance Plan for Customer Service Inquiry Accuracy (Feb. 13, 2003)) (Att. A to <i>Ex parte</i> Letter from Geoffrey Klineberg, Kellogg Huber, to Marlene Dortch, FCC (Feb. 19, 2003)).
SBC Billing <i>Ex parte</i>	<i>Ex parte</i> Letter from Cynthia Mahowaid, SBC to Michael Hirrel, DOJ (Feb. 15, 2003) (Att. B to <i>Ex parte</i> Letter from Geoffrey Klineberg, Kellogg Huber, to Marlene Dortch, FCC (Feb. 19, 2003)).
DOJ EVALUATION	
DOJ Eval.	Evaluation of the Department of Justice, WC Docket No. 03-16 (filed Feb. 25, 2003)

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REPLY COMMENTS OF WORLDCOM, INC.

Since WorldCom filed its Comments, DOJ and Illinois Commission staff have both concluded that SBC's OSS and performance reporting are not yet adequate to justify section 271 approval. DOJ's conclusion was based in part on new evidence that SBC's bills are radically inaccurate, as well as on evidence of recent line loss problems and other OSS issues. The Illinois staff also pointed to OSS issues, while focusing on defects in SBC's performance reporting. These latest evaluations simply confirm what WorldCom explained in its Comments – SBC has not yet shown that it provides non-discriminatory performance today nor that there is any assurance it will do so in the future.

I. SBC'S OSS REMAINS DEFICIENT

A. Billing Errors

The concerns that WorldCom raised in its Comments about SBC's bills appear to have been confirmed. In its Comments, WorldCom explained that an initial review of its bills seemed to indicate that SBC was charging it for many UNE-P transactions it did not

transmit. WorldCom stated that it needed to explore this problem and other billing issues further.

SBC's own review now seems to have confirmed the existence of problems similar to those discussed by WorldCom. As DOJ explains, the results of SBC's own recent reconciliation reveal "a significant number of prior billing errors." DOJ Eval. at 11. In fact, this is quite an understatement. As DOJ notes, SBC found 76,000 UNE-platform circuits that were provisioned, but were not being billed . . . totaling \$7.6 million," and "62,000 UNE-platform circuits that were inactive, but that were being billed for which SBC will issue credits of \$9.3 million." DOJ Eval. at 11 n.47. The magnitude of the errors is stunning. It appears that SBC bills bear little relation to what is actually ordered. And the fact that the overall level of overbilling in the aggregate for all CLECs is ostensibly "only" \$1.7 million more than the level of underbilling does not eliminate the impact of these severe inaccuracies.

While describing SBC's billing problems as one reason not to support SBC's application on the present record, DOJ notes that "SBC's billing problems in Michigan may already be on the verge of resolution." DOJ Eval. at 11. Unfortunately, there is simply no reason to conclude this is so. On February 11, SBC provided an e-mail listing credits that would be provided on WorldCom's UNE-P accounts. SBC stated that WorldCom would be credited more than \$5.5 million for errors in Michigan. But SBC provided little description of these errors. Based on the limited description SBC provided on February 11, the credits could be for billing of lines that do not belong to WorldCom, billing of particular charges that were inapplicable, incorrect rates, or a mixture of all of these problems. Lichtenberg Reply Decl. ¶ 15.

The credits/new charges that SBC discovered to be necessary appeared for the first time on WorldCom's bill just last week. It will take several weeks just to analyze those credits/charges to determine exactly what they are for, much less to determine whether they are accurate. And even if SBC has now appropriately issued credits/debits for past problems, that provides no basis for concluding these problems have been corrected on a going-forward basis. *Id.* ¶ 16.

Indeed, WorldCom's high-level analysis suggests that billing problems continue on recent bills. To better understand the bills it is receiving from SBC and to enable it to better audit those bills, in January WorldCom asked SBC a series of questions about its bills. SBC responded on February 25. WorldCom will have to analyze SBC's additional responses closely and compare them to its bills and ask further questions of SBC before it can fully understand the accuracy of its bills. But even SBC's initial responses suggest that some significant errors continue on the bills. For migrations for UNE-P POTS customers, SBC says that the only NRC that CLECs should be charged is the NHCHG USOC for \$0.35.¹ Yet WorldCom seems to be charged many other NRCs on its bills for UNE-P POTS customers, and in fact, has an open dispute with SBC regarding these charges. (WorldCom also has open disputes related to loop rates and the quantity of lines being billed.) Lichtenberg Reply Decl. ¶ 11. For new lines, SBC appears to be charging for the SEPUP USOC which is the processing charge for standalone loops, as well as the

¹ It is possible that some USOCs are included erroneously on WorldCom's bills because SBC has mis-provisioned WorldCom's orders. WorldCom discussed problems with provisioning accuracy in its Comments and also the fact that SBC does not have a metric that correctly assesses provisioning accuracy.

SEPUC USOC, which is the line connect service establishment charge for UNE-P.²

There may be some reasonable explanation for inclusion of the SEPUP USOC, but WorldCom is not aware of any such explanation based on its initial review. *Id.* ¶ 12.

SBC also charged WorldCom for 6,798 disconnect orders in December (NR90F), for 6,148 loop disconnect charges (NR90E) and for 6,219 analog loop disconnect charges (NR90G). These all appear inapplicable based on SBC's letter. According to SBC, WorldCom should not be charged any disconnect charge unless its customer switches to a UNE-L CLEC. Charging CLECs more when a customer migrates to a UNE-L CLEC is not compliant with TELRIC and prevents CLECs from accurately auditing their bills, as they have no way to know for sure when a customer has migrated to a UNE-L CLEC as compared with a UNE-P CLEC. For present purposes, however, what is important is that SBC's conclusion that WorldCom should be assessed disconnect charges – much less multiple disconnect charges – for more than 6,000 customers in December is almost certainly far too high. It is very doubtful that so many of WorldCom's customers switched to a UNE-L CLEC. Lichtenberg Reply Decl. ¶ 13.

SBC's responses to WorldCom in Illinois confirm further problems with WorldCom's bills. In Illinois, SBC was somewhat more forthcoming in response to WorldCom's questions, perhaps because it was ordered to respond by the Illinois ALJ. In its questions, WorldCom listed different USOCs that appeared on its Illinois UNE-P bills, some of which WorldCom believed to be inappropriate, and also listed the rates SBC was charging for these USOCs. In response, SBC acknowledged that four of the USOCs "are not currently applicable to the ordering and provisioning of UNE-P in Illinois" and said

² SBC explains these charges in its Illinois letter. It does not discuss them in its Michigan

that, to the extent these appeared on WorldCom’s bills, it was the result of manual errors. Letter from Karl Anderson, SBC, to Darrell Townsley, WorldCom, Feb. 20, 2003 (Att. 3. to Lichtenberg Reply Decl.). SBC further stated that for six other USOCs, “the rates listed below are not consistent with the currently effective tariff rates for UNE-P. . . . Our review indicates that the MCI-specific UNE-P pricing table in the Illinois CABs billing system was not updated when changes to those rates became effective at various times during 2002. The Company is in the process of updating those tables.” *Id.* The differences between the rates that SBC was charging WorldCom and the rates it was supposed to charge WorldCom were significant. For example, SBC was charging WorldCom NRC service order charges for ports of \$15.97 instead of \$1.02, and a recurring port charge for residential service of \$5.01 instead of \$2.18. *Id.*

Although SBC did not identify any similar errors in its Michigan responses, that may simply be because its Michigan response was less extensive. What is clear, however, is that SBC’s failure even to update key billing tables in Illinois for months is further evidence of institutional or systemic limitations in SBC’s regional billing operation that is preventing SBC from generating accurate bills. Lichtenberg Reply Decl. ¶ 14.

Even aside from WorldCom’s high-level review of its own bills, the fact is that SBC has just acknowledged making massive billing errors. It has not established any track record since making those errors to show that its performance will improve going forward, and the problems revealed in the BearingPoint test, concerning SBC’s failure to audit bills sufficiently before they are transmitted, reveal that SBC has no good

letter.

methodology for catching or correcting these errors. While it is certainly possible that SBC's consolidation of its billing platforms last October will improve its bills, no empirical evidence demonstrates that such improvement has occurred. SBC points to BearingPoint conclusions in testing in other states subsequent to October (Billing *ex parte*, Att. B.), as a basis for suggesting its performance is now acceptable. But BearingPoint was not specifically examining the changes to SBC's billing systems to determine if there had been improvements subsequent to revelation of the major problems (and had not uncovered the problems SBC now admits in earlier testing). Indeed, because SBC did not conduct its analysis until January 2003, BearingPoint was not even aware of existing problems when it conducted its testing.

Nor does SBC's compliance plan on bill auditability provide any basis for confidence that bills will become more accurate. That plan largely consists of promises to better train CLECs and internal SBC personnel on how CLEC bills are structured. It does not promise many specific improvements on auditability internal to SBC, much less promise improvements directly related to billing accuracy. Lichtenberg Reply Decl. ¶¶ 7-8. Severe billing errors arose and continued despite SBC's prior claims that bills were auditable and it is doubtful that this time will be any different. Indeed, while it is essential that CLECs can audit SBC bills as a check against SBC errors, section 271 is not a game in which BOCs are permitted severely deficient performance on the theory that either the BOCs themselves or CLECs may later catch the problems that exist. With billing problems of this magnitude, it is essential that SBC demonstrate dramatic improvement in performance, as well as auditability of its bills, before obtaining section 271 authorization.

B. Line Loss Problems

As DOJ notes, the MPSC stated in its Report that it could not assume a trouble free environment for line loss notifications existed without more experience, and it required SBC to submit a compliance plan in this area. *MI PSC Report* at 69. But the experience since the MPSC issued its Report has not been good. As DOJ explains, the Michigan CLECs allege that “they have continued to encounter problems with line loss notification virtually until the present moment.” DOJ Eval. at 10. Indeed, WorldCom described in its Comments the serious line loss issue it faced at the end of January. WorldCom Comments at 10-11. DOJ therefore concludes that SBC’s present line loss performance is not sufficient to justify section 271 approval. DOJ Eval. at 8-10.

Nor can SBC justify section 271 authorization on the basis of a compliance plan it intends to adopt at the behest of the MPSC. Even if SBC’s plan for future compliance were relevant, it is inadequate on its face. The plan addresses only notification of “line loss interruptions,” not notification of line loss delays, or line loss formatting errors. Draft Compliance Plans Att. D. And even for line loss interruptions, it addresses only notification of such interruptions, not steps to prevent them from occurring in the first place. The plan also says that SBC will provide reports to the MPSC on line loss issues, but provides no definition of the scope of the issues it will include. Lichtenberg Reply Decl. ¶¶ 3-4. And SBC has not asked BearingPoint to review its new line loss procedures or compliance with them. Draft Compliance Plans Att. H.

More fundamentally, given SBC’s track record, SBC must demonstrate several months of quality performance before being permitted entry into the long distance market. Indeed, in the past, SBC has on several occasions adopted improvements

ostensibly designed to address line loss deficiencies, but such deficiencies have reappeared. The “enhanced communication procedures” that SBC adopted in November, for example, *see* Draft Compliance Plans Att. D, failed to ensure that SBC communicated to other CLECs the line loss problems that WorldCom experienced at the end of January. Lichtenberg Reply Decl. ¶ 3. They also failed to ensure that SBC communicated to WorldCom notification of the problems that other CLECs experienced since November. AT&T Comments at 19. This is simply further evidence of what the Commission well knows: promised improvements do not always result in enhanced performance. This is one reason the Commission has not accepted such promises as the basis of section 271 authorization.

C. Change Management

DOJ properly emphasizes SBC’s repeated failure to provide timely notification to CLECs of changes to its OSS that directly impact CLECs. DOJ Eval. at 6-7. WorldCom has suffered less from these undisclosed changes than some other CLECs, as WorldCom is not yet using LSOG 5, which has been the subject of many of these changes. Nonetheless, SBC’s failure to announce changes and problems with its OSS has affected WorldCom as well. The problem WorldCom experienced at the end of January with line loss formatting, for example, was not only a failure of SBC’s line loss process but also a failure of its change management process. SBC should have notified WorldCom of the problem as soon as it arose, and certainly should have notified other CLECs. Lichtenberg Decl. ¶ 22.

In its new compliance plan, SBC promises to develop improved procedures to notify CLECs “when changes to OSS are made that may reasonably be expected to be

CLEC-impacting.” Draft Compliance Plans Att. F. But SBC does not propose a definition of CLEC impacting, leaving no way to determine whether its new policy will eliminate the notification problems. SBC does not even explain how its new policy will differ from its former policy. Thus, while WorldCom hopes that SBC’s compliance plan does result in improvements, there is little basis to conclude this will be so. Lichtenberg Reply Decl. ¶¶ 5-6. SBC did not even ask BearingPoint to review its new change management procedures or SBC’s compliance with them. *Id.* Att. H. Once again then, SBC is asking the Commission to approve its section 271 application on faith rather than on a track record of acceptable performance.

D. Working Service Conflicts

In the last several weeks since WorldCom filed its Comments, SBC has not made any progress in eliminating the problems caused by its process of requesting information from CLECs to resolve “working service conflicts.” Nor has SBC even provided further explanation of why this process is necessary in the first place. The existence and flaws in SBC’s working-service-conflicts process therefore provide one additional reason that DOJ failed to endorse SBC’s section 271 application. DOJ Eval. at 12.

In some respects the working-service-conflicts process has gotten worse since WorldCom filed its Comments. When SBC receives an order that it considers to have a working service conflict, SBC no longer immediately faxes a working-service-conflicts form to WorldCom. Instead, SBC holds the order until it has 50 or 60 similar orders and then transmits a batch of faxes to WorldCom. As a result, WorldCom has no idea what has become of its initial order in the interim. And when WorldCom finally receives the working-service-conflicts form, it has less time to contact its customers, obtain the

information it needs to respond to the form, and transmit a response. If WorldCom does not meet the 30 day deadline, which apparently starts on the day that is listed on the form, not when the fax is sent or received, SBC will cancel the order without informing WorldCom. Lichtenberg Reply Decl. ¶ 18.

Although DOJ notes that WorldCom has suggested an e-mail process as an interim solution (DOJ Eval. at 13 n.57), and WorldCom does believe this would be preferable to the fax process in place today, the truth is that SBC should eliminate the working service conflicts process altogether (or at least fully automate it) prior to receiving section 271 authority. There does not appear to be any need for this process. It causes significant unnecessary work for CLECs and results in cancelled orders without any notification to CLECs of the cancellation.

E. Inability to Order Line Splitting

WorldCom shares the concerns raised by AT&T and DOJ about SBC's processes for handling line splitting orders. AT&T Comments at 49-53; DOJ Eval. at 13-14. To date, WorldCom has not been submitting line splitting orders in Michigan. But WorldCom intends to begin doing so soon. WorldCom has been working with its data CLEC ("DLEC") and others to begin offering customers the ability to obtain voice and DSL service from WorldCom. In order to do so, WorldCom must be able to place line splitting orders. Lichtenberg Reply Decl. ¶ 20.

Yet WorldCom learned in this proceeding of deficiencies in SBC's OSS that will thwart WorldCom's longstanding plan to begin submitting line splitting orders or cause much additional work. That is because SBC only accepts line splitting orders if the voice CLEC and DLEC are on the exact same version of EDI, down to the dot release.

WorldCom and its DLEC are not on the same version of EDI today. And while each is moving to a new version of EDI in April, they are moving to different dot releases. *Id.* ¶ 21.

WorldCom's mass markets organization chooses when to move to a new version of EDI based on an assessment of the cost and risks of doing so as compared to the advantages of new functionality. In contrast, WorldCom's DLEC, like many DLECs, purchases EDI from a vendor (NightFire) and has little choice but to use the version of EDI that NightFire sells. Moreover, even if WorldCom's DLEC could move to the version of EDI used by WorldCom's mass markets organization, this would then preclude it from providing DSL services via line splitting with other voice providers that were on different versions of EDI. As a result, WorldCom will be unable (at least in the absence of some difficult work-around) to place line splitting orders in conjunction with its DLEC unless they fortuitously end up on the same version of EDI at a particular point in time. Thus, if a CLEC wants to do business with multiple DLECs (each of which is on its own EDI version) that will not be possible, as would likely be necessary for a CLEC to extend the reach of a voice/DSL offer to the whole state. Nor can a DLEC do business with multiple CLECs. This allows SBC to limit DSL competition and harms customers because it removes the ability to allow companies to team freely with others. Lichtenberg Reply Decl. ¶¶ 21-22.

Even if WorldCom were on the same EDI version as its DLEC, it would be seriously concerned about placing line splitting orders because of the other concern raised by AT&T – and by DOJ. AT&T Comments at 53-54; DOJ Eval. at 13 n.13. For a customer that has DSL as well as voice service who wants to disconnect his DSL service,

SBC requires CLECs to place three separate orders. As a result of SBC's process, a customer who disconnects DSL service can lose voice service for up to seven days and can also lose his telephone number. It is unacceptable to force a customer to accept such a risk if he simply wants to get rid of DSL. Lichtenberg Reply Decl. ¶ 22.

The ability to place line splitting orders is likely to be vital to future competition as more and more customers desire broadband service. Based on SBC's current processes, CLECs have no practical way to offer any broadband service to customers. SBC's current processes therefore constitute a major impediment to competition.

F. Erroneous Cancellations/Missing Completion Notices

SBC also continues to cancel orders for reasons that are unrelated to the working service conflicts form without providing notification to WorldCom. That problem has grown worse since WorldCom filed its Comments. Moreover, it appears likely that it is not just WorldCom that is experiencing this problem. AT&T discusses an extensive problem it has experienced with missing Billing Completion Notices ("BCNs"). AT&T Comments at 16-17. Because WorldCom is presently using LSOG 4, not LSOG 5, in Michigan, WorldCom does not receive BCNs. (WorldCom is moving to LSOG 5 in April, and thus the major problem AT&T has faced in receiving BCNs is of significant concern to WorldCom independent of its problems with canceling orders.) But SBC's penchant for canceling orders without sending any notifications would cause it to fail its obligation to provide BCNs, just as it is failing its obligation to provide earlier notifications.

In order to obtain a more comprehensive analysis of SBC's failure to transmit completion notices on certain orders, WorldCom transmitted to SBC a list of 160 orders

for which it had not received a completion notice in November or December. SBC's response confirms that most of these orders were cancelled as a result of a variety of manual or systems issues on SBC's side. SBC service representatives canceled 13 orders in its back-end system ASON, but failed to reissue them as they were supposed to. SBC service representatives canceled 41 orders in ASON, did reissue the orders, but somehow failed to ensure that SBC sent a completion notice. SBC cancelled 22 orders "due to reject[s]" but failed to transmit rejection notices to WorldCom. SBC cancelled five orders because the customers had been assumed by another carrier, but failed to transmit rejection notices to WorldCom. SBC cancelled 43 orders as a result of the working service conflicts issue discussed above. And SBC cancelled 13 orders that it said were valid rejects, but for which it failed to transmit rejection notices. Lichtenberg Reply Decl. ¶ 24.

The problem has grown worse in subsequent months. As of February 27, WorldCom was missing 135 completion notices in Michigan, 211 in Illinois and 132 in the other states in the former Ameritech region. WorldCom does not know the cause of these missing completion notices and has submitted them to SBC for analysis. But it is likely that the cause is similar to those orders that were erroneously cancelled in November and December without notification to WorldCom. That is, manual errors of SBC service representatives, as well as some systems errors, are leading to erroneous cancellations. Lichtenberg Reply Decl. ¶ 25.

G. Transmission of Erroneous Completion Notifications

SBC continues to transmit some incorrect completion notifications to WorldCom and to do so via e-mail. Most recently, on February 20, SBC sent WorldCom another

spreadsheet with completion notifications transmitted in error. Lichtenberg Reply Decl. ¶ 26.

Although SBC will argue that the scope of this issue is small, it is the type of nagging problem that has a significant impact in conjunction with other problems. It has a direct impact on customers who receive WorldCom bills that they should not receive. And it forces WorldCom to develop a system to stop billing based on receipt of an e-mail rather than the automated line loss process.

Indeed, SBC's e-mail process is one of several ad hoc processes SBC has adopted without discussion that prevent full use of the automated systems WorldCom and other CLECs have worked so hard to construct. As noted above, SBC's faxes the working-service-conflicts forms. SBC also continues to transmit a few line loss notifications each week via e-mail, rather than by the automated process, for reasons that remain entirely unclear. Lichtenberg Reply Decl. ¶ 27.

SBC indicated in its February 20 e-mail that it had taken "corrective action" to "prevent this [transmission of erroneous notifications] from happening in the future." But when asked what this corrective action was, SBC responded, "To reduce the number of notifications received in error the Service Reps are coached by their managers. Also, the Safety Net Report is working as designed by SBC." E-mail from Donna Moore to Pat Webb, Feb. 27, 2003 (Att. 5 to Lichtenberg Reply Decl.). Once again then, SBC's corrective action appears to be training its service representatives. But this training does not appear to be working. At a minimum, SBC should be required to ease the impact of its mistakes by transmitting automated line loss notifications to WorldCom after SBC determines it has erroneously transmitted completion notifications.

SBC seems to believe that it can impose costs on CLECs by unilaterally adopting a number of ad hoc non-automated processes on the theory that the Commission is unlikely to view any one of these processes as sufficiently problematic to stop a section 271 application. But the Commission should not permit SBC to get away with a strategy of death by a thousand cuts. It should require SBC to eliminate its unnecessary ad hoc processes before granting SBC's section 271 application.

H. Pre-order Outages

The problems that WorldCom has experienced with pre-order outages in the former Ameritech region continued in February. WorldCom experienced six pre-order outages in February with an average outage time of nearly 20 minutes. SBC has provided no root cause for these outages. Lichtenberg Reply Decl. ¶ 30.

WorldCom is not unique in experiencing problems with pre-order outages. AT&T reports experiencing even more severe outages with its CORBA interface than WorldCom has recently experienced with its EDI interface. Such problems are critical as they vastly impede a CLEC's ability to place orders.

II. SBC'S PERFORMANCE DATA IS UNRELIABLE

As DOJ concluded, reliable performance data "serves as the key input in determining whether a BOC is providing nondiscriminatory access to network services and facilities." DOJ Eval. at 14. The Commission has repeatedly concluded this as well. As the Commission explained in rejecting the first Michigan 271 application, "The Commission must be satisfied that the performance measures that Ameritech relies on in support of its section 271 application actually measure performance in a manner that shows whether the access provided to OSS functions is nondiscriminatory." *MI PSC*

Order ¶ 211. But SBC has not shown that its performance data is reliable today. Nor has it shown that its performance reporting is adequate to serve as a needed check against future backsliding. The MPSC itself explained that “[a]t this time, the Commission cannot conclude that SBC’s performance metric reporting process has fully achieved a level of stability and dependability which will be required in the post-Section 271 environment to permit continued monitoring and assurances against discriminatory behavior.” *MI PSC Report* at 22.

Since WorldCom filed its Comments, BearingPoint has issued two new Exceptions concerning SBC’s failure to document the methods it uses to calculate performance measurements. Atts. 8 & 9 to Lichtenberg Reply Decl. Moreover, the Illinois staff has filed affidavits in the Illinois section 271 docket that bolster WorldCom’s conclusion that SBC’s performance reports are unreliable. Although the Illinois staff was analyzing the Illinois tests and performance measures, rather than the Michigan ones, the Illinois conclusions remain directly applicable, as most of the metrics analyzed and exceptions found were identical in both sets of third-party tests. (SBC generally has regional metrics and ostensibly also has regional OSS, so even the few BearingPoint exceptions opened with respect to specific states are generally applicable region wide.)

After an extensive analysis of the BearingPoint and Ernst & Young reports, Illinois staff concluded that the problems with data integrity and performance metrics standards found in those tests rendered SBC’s current performance data unreliable as a basis of assessing performance. In concluding that SBC’s performance data is unreliable, Illinois staff first relied on the extremely high overall failure rate in the BearingPoint

metrics test, Weber Aff. ¶ 56 (Att. 6 to Lichtenberg Reply Decl.), and the fact that SBC failed four of the five parts of that test: data collection and storage verification (PMR1), *id.* ¶¶ 58-61, metrics change management verification and validation review (PMR 3), *id.* ¶¶ 65-66, metrics data integrity verification and validation review (PMR 4), *id.* ¶¶ 69-72, and metrics calculation and reporting verification (PMR5), *id.* ¶¶ 73-77. As a result of these failures, staff concluded that the BearingPoint test “provides clear indication . . . that at this time the Commission should not rely upon the performance measurement data being reported by the company.” *Id.* ¶ 78. SBC’s failure with respect to metrics change management was particularly worrisome given the fact that SBC plans soon to change business rules for many of its metrics.

Staff further concluded that the Ernst & Young report provided additional evidence that SBC’s performance reporting is unsatisfactory. Staff first noted that the Ernst & Young report could not undermine much of the BearingPoint results, because “portions of BearingPoint’s PMR1 test, and all of its PMR2 and PMR3 tests were not covered by E&Y’s examinations.” *Id.* ¶ 86. Staff then pointed out that in the areas that Ernst & Young did examine, Ernst & Young found Category I exceptions with respect to 50% of the measures it examined, and that four different exceptions applied to each of these measures on average. *Id.* ¶ 92. Staff also pointed out that nearly half of the performance measures were also subject to exceptions in Category II and were also subject to exceptions in Categories III through V, including 15 Category V exceptions that affect 29% of the performance measures.³ *Id.* ¶¶ 93-98.

³ Category I exceptions are those that ostensibly were corrected and for which March, April, and May 2002 data was restated. Category II exceptions are those that were ostensibly corrected but for which March, April, and May 2002 Results were not

Staff then dispelled the notion that Ernst & Young had certified that SBC had now satisfied these exceptions. With respect to Category I exceptions, Staff explained that “While E&Y states that it tested the accuracy of corrective actions implemented by the company for the restated March, April and May 2002 data, there has been no assurance provided to indicate that the data months beyond May 2002 no longer contain the data inaccuracies raised by the category I exceptions.” *Id.* For Category II, Staff pointed out that “[m]any of the corrections E&Y reported were not made until the September, October or the November 2002 results . . . and E&Y’s verification of SBC Illinois’ corrective action occurred for a single month only. In the February 12, 2003 hearings Ernst & Young stated that it can provide no assurance that the exceptions noted do not exist in data months after the month it completed its validation.” *Id.* ¶ 94. For Category III, staff explained that corrections were not scheduled to occur until December 2002, and noted that there has been no verification that these corrections have occurred. *Id.* ¶ 95. Finally, for Categories IV and V, staff reported that no corrections have occurred at all. *Id.* ¶¶ 96-98. Thus, Illinois staff concluded the Ernst & Young report only bolsters the conclusion of BearingPoint that SBC’s performance reporting is not yet satisfactory.

Illinois staff further pointed to the business rule interpretations that Ernst & Young found. Staff rejected SBC’s excuse that CLECs have now agreed to change these rules. It explained that “[w]hile many of these interpretations have since been discussed in the current six-month review proceeding, it does not excuse the fact that the business rule documents were not specific enough to clearly communicate the interpretations that

restated. Category III exceptions are those that were corrected but not yet reported. Category IV exceptions are those for which no corrective action is planned. And Category V exceptions are those in the process of being corrected.

it asked E&Y to apply to the evaluation,” *id.* ¶ 100. It also does not change the fact that for the months SBC is relying on to show non-discriminatory performance, SBC failed to comply with the business rules then in effect. *Id.* ¶ 103.

Illinois staff finally concluded that SBC had not fully corrected the problems that Ernst & Young found with control deficiencies. This was apparent from Ernst & Young’s own conclusion that with respect to several exceptions, SBC was initially unable to implement successfully the corrective actions it had agreed to undertake. *Id.* ¶¶ 108-109.

Like the MPSC, therefore, the Illinois staff found severe deficiencies in SBC’s performance reporting. Unlike the MPSC, however, the Illinois staff followed this finding to its logical conclusion – SBC cannot rely on its performance data to show that its OSS is non-discriminatory. This is so even though the Commission has stated there may be other indicators of reliability beyond a third-party test. DOJ Eval. at 15. The Commission has never concluded that BOC data is reliable in the face of massive outstanding findings by the third-party auditor hired by the state to audit performance metrics that the BOC data is not yet reliable – especially where the state itself found significant ongoing problems with the reliability of data and the staff of a neighboring state expressly concluded that the data is unreliable.

Moreover, even if SBC could show that it provides non-discriminatory performance today – and it cannot – there is no dispute that SBC’s performance reporting is not sufficiently dependable to permit continued monitoring of SBC’s performance. The MPSC itself found this to be so. And there is no reason to believe that sufficient dependability will be achieved by the end of the 90 day review period. But without such

dependability, SBC lacks the check against backsliding the Commission has correctly deemed vital to the section 271 process. There is no other mechanism to prevent backsliding. Where a BOC relies on a performance plan to prevent backsliding, there must be reasonable assurances that the data is accurate. *New York Order* ¶ 433.⁴

The Commission must therefore reject SBC's section 271 application for Michigan. The conclusions of Illinois staff with respect to Illinois pertain equally to Michigan:

The results of the reviews by BearingPoint and Ernst & Young of SBC Illinois' performance measurement data, taken together, significantly undermine the accuracy and reliability of those data. Since those data serve as inputs to any performance remedy plan used to prevent future 'backsliding', the efficacy of any such plan is seriously compromised unless these deficiencies are resolved. Moreover, until those data can be demonstrated to be accurate and reliable by BearingPoint (or another independent third party using a similar analysis), it cannot be relied upon to establish current or future compliance with applicable competitive checklist requirements.

Hoagg Aff. at 4 (Att. 7 to Lichtenberg Reply Decl.). The same is true in Michigan.

III. SBC'S PRICING OF DAL REMAINS ABOVE COST

The only justification that SBC has ever provided for its current rates for directory assistance listings ("DAL") is the DAL cost studies it submitted in December 1999. But WorldCom showed the flaws in those studies, and the MPSC rejected them. SBC is

⁴ SBC's performance metrics plan is also inadequate to prevent backsliding because of limitations caused by its k table. SBC has been at the highest level of duration remedies (\$60,000) for many months in a row in Michigan, but the k table "forgave" the \$60,000 due WorldCom in November as if this were a random occurrence. It also forgave more than half a million dollars in remedies with respect to trunking metrics in September. At \$75 per occurrence, those amounts also made the levels seem to be a random process fluctuation.

Three other SBC Ameritech states eliminated the k table and increased sanctions for failures. WorldCom had hoped the MPSC would do so as well, and that it would not have to raise this issue here. But the MPSC has yet to act.

therefore left on the present record without any justification for its DAL rates. The impact of these high rates is significant, costing each CLEC that provides DAL approximately \$225,000 per year.⁵

Since WorldCom filed its Comments, Commission staff have asked WorldCom a number of questions concerning DAL. WorldCom answered most of those questions in a February 26 *ex parte* letter. For simplicity's sake, it will summarize the most important of those answers here, while also addressing other questions posed by Commission staff.

We begin by noting that there can be no doubt that SBC has an obligation to price DAL at cost. Section 251(b)(3) of the Act requires LECs to provide nondiscriminatory access to directory assistance, and section 271(c)(2)(B)(x) requires BOCs to provide nondiscriminatory access to databases, which include directory assistance databases. The Commission has previously emphasized the importance of non-discriminatory access to the DA databases. In the *UNE Remand Order*, the Commission relieved BOCs of the requirement to unbundled DA *services* but did on “based on competitors being able to provide DA, and essential to this ability is access to accurate database information.” *DAL Order* ¶ 9.

Because BOCs are wholesale providers of access to DAL but also use DAL themselves in the provision of retail service, non-discriminatory access requires that BOCs provide the same access to other carriers that they provide to themselves. The

⁵ There are 5.46 million listings in Michigan. Thus, each CLEC must pay the DAL charge for each of these listings in order to begin providing DAL. Moreover, in WorldCom's experience, it must pay for approximately 7.5 million updates per year in order to provide DAL service. At the tariffed rates for DAL, including the NRCs, this amounts to a charge of \$158,000 for the initial listings (5.46M x \$.028) and \$210,000 for the update listings per year (7.5Mx \$.028) plus \$15,100 in recurring charges. This must

BOCs themselves access DAL at cost and thus must provide DAL to other carriers at cost. Indeed, the Michigan Commission concluded as much, explaining that “[t]he Commission finds that the requirement to provide nondiscriminatory access to DAL requires that it be provided at cost-based rates consistent with Case No. U-11831 parameters, and on a basis equal to that which the incumbent provides itself.” WorldCom Rehearing Petition Att. G (attached to WorldCom’s Comments). The MPSC explained that the FCC had itself stated that “any standard that would allow a LEC to provide access to any competitor that is inferior to that enjoyed by the LEC itself is inconsistent with Congress’ objective of establishing competition in all telecommunications markets.” Att. G (quoting *Directory Information Listing Third Report and Order* ¶ 128).

The MPSC’s decision on this score carries particular weight, because the FCC decided in the *DA Listing Order* “not to impose a specific pricing structure on directory assistance” – not to require that prices be based on incremental costs plus a reasonable allocation of common costs and overheads, as was true for subscriber list information – but noted that this “does not preclude a state commission from doing so.” *DA Listing Order* ¶ 37. “In such cases,” the Commission explained, it “would adopt the state rate as its own, subject to the Title II requirements of reasonableness and nondiscrimination.” *Id.* As one example of a state decision to adopt a particular cost structure that the Commission would adopt as its own, the Commission cited New York’s decision to arrive at a particular cost-based price model. *Id.* ¶ 37 n 99.

Here, the MPSC has adopted a cost-based pricing requirement (although it has not yet arrived at a particular cost model). Moreover, the Title II parameters themselves

be paid by every CLEC that wants to provide its own DA service, including small

require cost-based rates even if they do not mandate a specific pricing structure. The Commission must therefore adopt the MPSC's requirement as its own.⁶

Just as it is clear that SBC must provide access to DAL at cost-based rates, it is equally clear that SBC is not doing so. When the Michigan cost case began in January 1999 (Case U-11831), SBC had not yet provided any cost studies for DAL. Nor had SBC tariffed any rates for DAL. Because the only rates for WorldCom to criticize when the cost proceeding began were those in its ICA, WorldCom explained in its April 1999 comments that these rates were far above cost, noting that the 2.8 cent rate for initial load per listing were 329% higher than the rates in New York and 2545% higher than the rate in Texas, and that differences were even greater for updates. WorldCom Reh'g Pet., Att. A. SBC subsequently provided cost studies, but these were completely flawed, as WorldCom showed in its July 17, 1999 filing. WorldCom Reh'g Pet., Att. B. On November 16, 1999, the Michigan Commission then ordered SBC to provide new cost studies. WorldCom Reh'g Pet., Att. C.

carriers.

⁶ WorldCom also continues to believe that DAL must be unbundled under § 251(c)(3), but the Commission appears to have concluded differently in the Triennial Review. Nonetheless, as WorldCom explained in its Comments, it believes that unbundling is required under the best reading of the *UNE Remand Order* and it was that order that was in place at the time SBC filed for section 271 authority.

Moreover, the Commission may well adopt in the Triennial a similar rationale to that it adopted in the *UNE Remand Order* when it concluded not to impose an unbundling requirement on DA services. That decision was predicated on the access carriers had to DA listings that would enable them to provide such services themselves, as well as the customized routing that CLECs would need to access such listings. *UNE Remand Order* ¶¶ 441, 444. If carriers could not obtain customized routing, the BOC would have to provide access to DA services at UNE rates. This would only make sense as an alternative to customized routing, however, if the presumption was that carriers that had access to customized routing could obtain the inputs needed to provide DA services at cost. One of the key inputs that carriers would need to do so is DAL.

SBC responded by filing confidential cost studies in December 1999 that attempted to justify the 2.8 cent rate for initial listings and also attempted to justify a 2.8 cent rate for updates. But WorldCom explained that SBC's cost studies were fundamentally flawed. SBC failed to spread the costs across all users of DAL, including its own retail customers and those of its affiliates. WorldCom Reh'g Pet., Att. D. SBC allocated the cost of administering the DA database only over the small number of carriers it predicted would purchase DAL uploads. It did not include retail customers and underestimated the number of carriers. WorldCom noted that correcting for these errors alone would reduce rates by 75%. *Id.*

The MPSC agreed with us that these were fundamental errors in these cost studies. It rejected these cost studies in August 2000, explaining that "there should be one study for all DA services. It is not permissible to compute different costs depending upon who is purchasing the service." WorldCom Reh'g Pet., Att. F. In other words, SBC had to spread costs of DAL over all users of DAL, including retail customers of DA services.⁷

⁷ Because the MPSC used the word "services," SBC claims that the MPSC rejected cost studies for DA services, not for DAL. See SBC Response to WorldCom's Petition for Rehearing (attached to SBC Feb. 24 *ex parte* letter from Geoffrey Klineberg to Marlene Dortch). That is nonsense. To begin with, we note that SBC cannot point to any MPSC language approving its DAL cost study – and that is because there is none. The confusion regarding the August 2000 Order is caused by the fact that the cost study SBC provided in December 1999 was labeled "Advanced Dialing Parity DA Listing Product" cost study, even though it was the only study SBC used to justify rates for DAL. As WorldCom explained at the time, "[I]t is apparent from Ameritech's study that it has created a very specific *service* . . . that it will use to meet its obligation to provide access to directory listing information as an unbundled network element." WorldCom Reh'g Pet. Att. D at 27-28 (emphasis added). WorldCom explained that this was the very flaw in the study because SBC failed to spread the costs of DAL over customers of retail services, as well as over wholesale customers of DAL. Thus, it is understandable that in

Despite its conclusion that SBC's cost studies failed to justify its proposed rates of 2.8 cents for initial uploads and for updates, the MPSC recommended approval of SBC's section 271 application. But it did so based on a simple mistake. The MPSC seemed to believe that the rates SBC tariffed in April 2002 were not predicated on the same December 1999 DAL cost studies it had rejected. But as WorldCom pointed out in its Comments, the cover letter to the April 2002 tariff makes clear that it is exactly those cost studies that were the basis of the tariffed rates.⁸ Moreover, the tariffed rates are *identical* to those proposed in the cost studies (with the exception of slightly *higher* monthly recurring charges and NRCs).

Except for the rejected December 1999 cost studies, SBC has never provided any other justification for its DAL rates. It has not provided any other cost studies. Nor has it

accepting WorldCom's argument the MPSC used the term services. But the argument WorldCom was making was clearly about DAL.

To the extent there was any doubt about this, the MPSC's December 2001 Order makes it clear. The Commission explains that WorldCom "points out that Ameritech Michigan does not have a Commission approved cost study for DAL." WorldCom Reh'g Pet. Att. G. In response, SBC did not say that it had an approved cost study but instead said it did not need one. The MPSC rejected this argument. Thus, it ill behooves SBC now to argue that SBC's cost study in fact had already been approved, for clearly it had not been. Indeed, in recommending approval of the SBC 271 application, the MI PSC Report states that "the December order found that the prices [for DAL] were noncompliant." *MI PSC Report* at 109. Although the MPSC also concluded that the April 2002 tariff rectified the problem, this was a mistake, as we show in the text.

⁸ There appears to be some confusion as to whether there were also DAL cost studies placed in the record in October 2000. There were not. The October 2000 cost studies related to DA services, as evidenced by the fact that they justified tariffs of per call rates, not of uploads or updates. Indeed, in its response to WorldCom's Rehearing Petition, SBC states that the October 2000 cost studies were its response to the Commission's August 2000 finding – but it says that it interpreted that finding as pertaining only to DA services, not DAL. Thus, SBC itself makes clear that the October 2000 studies pertained to DA services. That is why when it tariffed DAL in 2002, it stated that it based the studies on the December 1999 DAL cost studies. There was no reference to any October 2000 cost studies. Moreover, as noted above, the premise of the MPSC's December 2001 Order was that there were no acceptable cost studies at the time.

advanced any other arguments to show that its rates are non-discriminatory. It was SBC's burden to show at the state level that its DAL rates were nondiscriminatory. It remained SBC's burden to show this in its initial filing here. SBC has failed to do so. It must therefore reduce its rates to cost-based levels or face rejection of its application.⁹

CONCLUSION

For the foregoing reasons, SBC's section 271 application for Michigan must be denied.

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Respectfully Submitted,

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March 4, 2003

⁹ WorldCom is not standing on ceremony despite the complete-when-filed rule. If SBC reduces its rates by 75%, as WorldCom proposed in response to SBC's December 1999 DAL cost studies, WorldCom will not object on this basis to approval of SBC's application.

Certificate of Service

I, Lonzena Rogers, do hereby certify, that on this 4th day of March, 2003, I have electronically served a true and correct copy of WorldCom, Inc.'s Reply Comments in WC Docket No. 03-16 on the following:

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